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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

DENNIS ROWLEY, Plaintiff and Appellant, v. TIM CUTHERS, Defendant and Respondent.	E070012 (Super.Ct.No. RIC523721) OPINION

APPEAL from the Superior Court of Riverside County. John W. Vineyard, Judge. Affirmed.

Dennis Rowley, in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

In 2009, plaintiff and appellant Dennis Rowley, representing himself, brought suit against many defendants, including defendant and respondent Tim Cuthers, claiming damages for the loss of personal and real property, including his residence and numerous

vehicles.[1] Rowley appeals from the judgment entered after the trial court, in a minute order dated January 24, 2018, dismissed with prejudice his fourth amended consolidated complaint against Cuthers. The trial court had issued an order to show cause why sanctions should not be imposed for failure to obtain a default judgment in a timely manner, and it found that the declaration Rowley submitted in response was "insufficient to establish good cause."

We affirm the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 2009, Rowley brought a number of separate lawsuits against Cuthers, as well as numerous other defendants, alleging, among other things, "conversion of . . . stolen property and vehicles." (See *Rowley v. Rebecca Tenwick's All-Mobile Bail Bonds, supra*, E054252.) The suits were consolidated, and in June 2009 Rowley filed a first amended consolidated complaint. The operative fourth amended consolidated complaint was filed on July 11, 2011.

On December 28, 2012, Rowley requested entry of default on the fourth amended consolidated complaint as to Cuthers and two other defendants.

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[1] Neither Rowley's initial complaints against Cuthers—he was named as a defendant in three of 14 related and eventually consolidated lawsuits filed by Rowley—nor any of the consolidated complaints, including the operative fourth amended consolidated complaint, appears in the record of this appeal. We derive this description of Rowley's claims from a previous unpublished opinion of this court in this case, affirming the dismissal of Rowley's third amended consolidated complaint with prejudice as to several other defendants. (See *Rowley v. Rebecca Tenwick's All-Mobile Bail Bonds* (Apr. 9, 2014, E054252) [nonpub. opn.].)

On January 8, 2013, the trial court ordered that "the only remaining complaint is the 4th Amended Consolidated Complaint" and dismissed all other "existing regular/consolidate[d]/cross complaints."

On several occasions in 2013 and 2014, Rowley attempted unsuccessfully to obtain a default judgment against Cuthers and the other two defendants. The matter then went dormant, with the docket showing no action by Rowley from April 2014, when the trial court's clerk rejected a request for default judgment as incomplete, until July 2016, when the trial court's clerk rejected another request for default judgment as incomplete.

In December 2016, after a prove-up hearing conducted over two days to allow Rowley to supplement his supporting evidence, the trial court entered a default judgment in favor of Rowley and against Cuthers and the two other defendants in the amount of $82,000.

In May 2017, Cuthers, represented by counsel, requested relief from default based on attorney mistake. Counsel accepted blame for Cuthers's failure to respond to the fourth amended consolidated complaint, declaring that he had misunderstood the trial court's January 8, 2013, order dismissing all "existing regular/consolidate[d]/cross complaints" except the fourth amended consolidated complaint, believing that Cuthers had been dismissed from the litigation entirely. Counsel also pointed out that the statutory five-year maximum for bringing a case to trial had elapsed well before entry of the default judgment. After a hearing in June 2017, the trial court granted the motion for relief, vacated the default and default judgment against Cuthers, and ordered pleadings responding to the fourth amended consolidated complaint to be filed within 30 days.

Cuthers did not file a responsive pleading within 30 days. On July 26, 2017, Rowley requested entry of default against Cuthers. The next day, Rowley submitted a request for default judgment, which the trial court stamped as received, but did not file.

On August 2, 2017, the trial court set an order to show cause hearing for January 29, 2018, ordering Rowley to "show cause, if any, why sanctions should not be imposed for failure to file default judgment" pursuant to California Rules of Court, rule 3.110.[2] Rowley filed a response to the order to show cause on December 19, 2017, describing his most recent attempts to obtain a default judgment, and attaching a copy of the request for default judgment and supporting documents.

On January 17, 2018, Cuthers's counsel filed a declaration in response to the order to show cause. Counsel again expressed his belief that Cuthers had previously been dismissed from the litigation, and again noted that the "five-year mandatory dismissal statute" had run.

On January 23, 2018, Rowley filed an additional declaration in support of his response to the order to show cause. This declaration and its supporting documents were largely dedicated to arguing the merits of Rowley's claims. Rowley's declaration did not address Cuthers's counsel's assertion that the five-year mandatory dismissal statue had run.

[2] Further undesignated rules references are to the California Rules of Court.

On January 24, 2018, the trial court issued a minute order ruling on the order to show cause without a hearing, as follows: "The declaration submitted per [Riverside County Superior Court] Local Rule 3116 is insufficient to establish good cause. [¶] On the 4th Amended Consolidated Complaint of ROWLEY Defendant/Cross-Defendant TIM CUTHERS Ordered Dismissed WITH Prejudice."[3] The minute order also vacates the order to show cause hearing. The trial court subsequently entered a judgment in accordance with this minute order.

II. DISCUSSION

Rowley contends that the trial court abused its discretion by dismissing the fourth amended consolidated complaint as to Cuthers without leave to amend. We find no abuse of discretion.

A. *Applicable Law*

The trial court dismissed the fourth amended consolidated complaint against Cuthers on an order to show cause issued pursuant to rule 3.110. As relevant here, that rule states: "When a default is entered, the party who requested the entry of default must obtain a default judgment against the defaulting party within 45 days after the default was entered, unless the court has granted an extension of time. The court may issue an order

[3] Riverside County Superior Court Local Rule 3116 provides as follows: "Unless otherwise specified in the Order to Show Cause, any response in opposition to an Order to Show Cause (a) shall be in the form of a written declaration and (b) shall be filed no less than four court days before the hearing on the Order to Show Cause. The Court may find the failure to file a timely declaration to constitute an admission by the responding party that there are no meritorious grounds on which to oppose the action that is the subject of the Order to Show Cause. In that event, the Court may vacate the hearing and issue any order consistent with that admission."

to show cause why sanctions should not be imposed if that party fails to obtain entry of judgment against a defaulting party or to request an extension of time to apply for a default judgment within that time." (Rule 3.110(h).) Here, the trial court found that Rowley failed to show good cause for an extension of time to obtain a default judgment. We review that ruling for abuse of discretion. (Cf. *Howard v. Thrifty Drug & Discount Stores* (1995) 10 Cal.4th 424, 429, 439-440 [discretionary dismissal for delay in prosecution].)

B. *Analysis*

Rowley did not obtain a default judgment within 45 days of the entry of default against Cuthers on July 26, 2017, as required by rule 3.110(h). Generally, a showing by a plaintiff that a request for default judgment supported by evidence had been submitted, together with a declaration that the plaintiff is prepared to appear at a prove-up hearing as soon as one can be scheduled, would be adequate to justify an extension of time under rule 3.110. It is therefore understandable that Rowley would find the trial court's holding that he had failed to demonstrate good cause "inexplicable," particularly since he had previously been granted a default judgment based on the same evidence. Nevertheless, we find no abuse of discretion here.

The fundamental reason why Rowley did not, and could not, obtain a default judgment after the most recent entry of default—whether within 45 days or not—was that he had long since failed to bring the case to a conclusion within the statutory time limits.

Under Code of Civil Procedure section 583.310,[4] "[a]n action shall be brought to trial within five years after the action is commenced against the defendant." If the action is not brought to trial within the time prescribed in the statute it "shall be dismissed by the court on its own motion or on motion of the defendant, after notice to the parties." (§ 583.360, subd. (a).) Section 583.360, subdivision (b) provides: "The requirements of this article are mandatory and are not subject to extension, excuse, or exception except as expressly provided by statute." The relevant statutes provide several possible bases for tolling of the five-year time period. (See § 583.340.) At no point, however, either in the trial court or on appeal, has Rowley attempted to demonstrate that tolling applied to bring this case within the statutory time limits, and no basis for tolling any meaningful amount of time appears from our review of the record.[5] The trial court therefore was required to dismiss the action on its own motion, since Cuthers did not bring a motion to dismiss. (See § 583.360, subd. (a).)

Before dismissal, section 583.310 requires notice to the parties. Here, the trial court's order to show cause may not have expressly indicated that it was considering dismissal of the action, either directly pursuant to section 583.310 or as a possible

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[4] Further undesignated statutory references are to the Code of Civil Procedure.

[5] It would be appropriate to exclude the approximately six months between entry of the default judgment in December 2016 and when that default judgment was vacated in June 2017. (See *Hughes v. Kimble* (1992) 5 Cal.App.4th 59, 68.) Even excluding this six-month period, however, substantially longer than the five-year maximum had elapsed before the trial court dismissed the action.

sanction for failure to obtain a default judgment in a timely manner under rule 3.110(h).[6] Nevertheless, the issue of the mandatory five-year time limit had been raised by Cuthers both in his request for relief from the default judgment and in his response to the order to show cause. Rowley had an opportunity, in both cases, to respond to the issue and demonstrate, if he could, that the maximum time limit had been tolled or otherwise not expired. He did not do so. And nothing in the record suggests that, if we were to remand the matter to the trial court for reconsideration after further notice to Rowley, that the trial court could reach a disposition other than dismissal. We conclude, therefore, that any notice error by the trial court was harmless under any potentially applicable standard.

No doubt, this litigation could have been more efficiently managed by both the parties and the trial court. Nevertheless, the purpose of sections 583.310 and 583.360 "is . . . to bring cases to a conclusion, to secure for plaintiffs the relief, and to defendants, the repose, to which the law entitles them, and to free the court's resources for the efficient adjudication of other claims." (*Hughes v. Kimble*, *supra*, 5 Cal.App.4th at pp. 70-71.) The trial court's dismissal of Rowley's action against Cuthers was consistent with this purpose, and any error in notice to the parties that it was considering dismissal was harmless.

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[6] Since the order to show cause is not included in our record, we cannot be sure of its contents.

III. DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.[7]

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RAPHAEL
J.

We concur:

CODRINGTON
Acting P. J.

SLOUGH
J.

[7] Cuthers prevailed in this appeal even though he did not file a respondent's brief.